

<b>FRERES LUMBER COMPANY, INC.,</b>	)	<b>AGBCA No. 2001-162-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
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	)	
<b>Representing the Government:</b>	)	
	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

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July 31, 2001

**Before HOURY, VERGILIO, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge HOURY.**

This appeal arose under Contract No. 087944 between the Forest Service, U. S. Department of Agriculture (USDA), and Freres Lumber Company, Inc., of Lyons, Oregon. The contract was awarded December 19, 1995, and was for the sale of timber in the Willamette National Forest in Oregon. After award, the Forest Service deleted 461,000 board feet of timber to bring the sale into Standards and Guidelines of the Northwest Forest Plan. Appellant filed a claim dated June 12, 2001, in the amount of \$444,939.82. The claim was denied by the Contracting Officer's (CO's) decision dated July 11, 2001.

The CO noted that 36 CFR 223.40, Cancellation for Environmental Protection or Inconsistency with Plans, provided criteria for adjusting the contract price and that the purchaser had supported the amount claimed. However, the CO concluded:

It is my decision that the purchaser is entitled to payment in the amount of

\$444,939.82 for replacement volume that has not been provided. However, because funds are unavailable to pay this amount at this time, I am hereby denying purchaser's claim.

Appellant filed a timely appeal and Complaint received July 19, 2001. The Complaint essentially asserts the facts set forth above. The Government filed an Answer asserting:

[T]he Government admits that it owes Appellant \$444,939.82 plus interest as provided by the Contract Disputes Act, from June 12, 2001. The Government requests that this Board enter judgment in favor of Appellant in the amount of \$444,939.82 plus interest.

**DECISION**

Accordingly, pursuant to the agreement expressed by the Complaint and Answer, pursuant to the Contract Disputes Act, 41 U.S.C. §§ 607(d), 612(b), the Board sustains the appeal.

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**EDWARD HOURY**  
Administrative Judge

**We Concur:**

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**ANNE W. WESTBROOK**  
Administrative Judge

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**JOSEPH A. VERGILIO**  
Administrative Judge

**Issued at Washington, D.C.**  
**July 31, 2001**